

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA)	
)	
Plaintiff,)	Case No. 1:05-cr-18
)	
v.)	
)	
DUAYNE SAFFORE,)	
)	
Defendant.)	<u>ORDER</u>
)	

Defendant, Duayne Saffore, has moved pursuant to Fed. R. App. P. 10(e) for an order supplementing the record, to include certain letters received and considered by Judge David W. McKeague at the time of sentencing, so that the supplemented record may be considered by the Court of Appeals in connection with defendant's pending appeal. The United States Attorney has informed the court that she does not oppose the motion. Rule 10(e) of the Federal Rules of Appellate Procedure allows the district court to correct or modify the appellate record to include any material "omitted from or misstated in the record by error or accident." The purpose of Rule 10(e) is to allow the district court to correct omissions from or misstatements in the record for appeal, not to introduce new evidence in the Court of Appeals. *See United States v. Smith*, 344 F.3d 479, 485 (6th Cir. 2003); *S&E Shipping Corp. v. Chesapeake & Oh. Ry. Co.*, 678 F.2d 636, 641 (6th Cir. 1982). The sentencing transcript discloses that Judge McKeague reviewed and took into account the letters that are the subject of defendant's motion. (docket # 122, at 15). Consequently, defendant's motion

seeks only to supplement the record on appeal by including documents that were before the district court, and does not seek to add new material. Accordingly:

IT IS ORDERED that defendant's motion to supplement the record on appeal (docket # 146) be and hereby is GRANTED. The six letters attached to defendant's motion are hereby certified to the Sixth Circuit Court of Appeals as part of the record on appeal, pursuant to Fed. R. App. P. 10(e)(2).

DONE AND ORDERED this 5th day of January, 2006.

/s/ Joseph G. Scoville
United States Magistrate Judge